

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6633

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLADEUR ALPHONSE,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. James A. Beaty, Jr., District Judge. (CR-96-108; CA-04-1145)

Submitted: July 27, 2005

Decided: August 5, 2005

Before KING, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Willadeur Alphonse, Appellant Pro Se. Benjamin H. White, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Willadeur Alphonse, a federal prisoner, seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing Alphonse's motion filed pursuant to Fed. R. Crim. P. 35(b)(2), which the court construed as a successive motion under 28 U.S.C. § 2255 (2000), and concluded that it lacked jurisdiction to consider. Alphonse also appeals from the district court's order denying his motion filed under Fed. R. Civ. P. 59(e). The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Alphonse has not made the requisite showing. Accordingly, we deny Alphonse's motion to proceed in forma pauperis, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED